(1) SBCivil Writ Petition No.3707/2001
(Rekha Kumari Rawat v. State & Anr.)

(2) SBCivil Writ Petition No.2973/2005
(Mishrilal Prajapati v. State & Anr.)

(3) SBCivil Writ Petition No.2974/2005
(Gopal Lal Prajapati v. State & Anr.)

(4) SBCivil Writ Petition No.3059/2005
(Dharmendra Shukla v. State & Ors.)

Date of Order :: 11th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary]
Mr. P.R.Mehta ] for the petitioners.
Mr. B.l.Tiwari, Deputy Government Advocate.

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The candidature of the petitioners has been rejected from consideration for appointment as Senior Teacher under the Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter referred to as “the Rules of 1971”) on the count that they do not possess two subjects taught in secondary schools with degree of Graduation. The principal point, therefore, require determination in these petitions for writ is whether the term “schools” used in entry No.8 column 4 of Section F of the Schedule appended with the Rules of 1971 is confined to the schools imparting education upto secondary level or the senior higher secondary schools are inclusive to it?

The entry No.8 of Section F to Schedule appended with the Rules of 1971 reads as under:-

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| 8.(a)[Senior Teacher] Enforcement Assistants | | 50% by direct recruit-ment & 50% by promotion | Graduate or equivalent Examination with atleast two subjects taught in Schools with Degree or Diploma in Education or Montessori Training. | 1.Teacher 2.Labora-tory Assistants 3.Teachers in Deaf. Dumb & Blind Schools. | Graduate or equival-ent exami-nation with atleast two Subjects taught in Schools with Degree Or Diploma in Educa-tion or Montessori Training. | 1.Jr./ Deputy Director of Education of the range concerned. 2.One District Education Officer to be nominated by Director, Primary & Secondary Education. 3.One expert to be nominated by Director Primary & Secondary Education. | Range wise | |

According to column 4 of the entry No.8 a person graduate or equivalent examination with atleast two subjects taught in “schools” with degree or diploma in education or montessori training is eligible to be considered for appointment as senior teacher by way of direct recruitment. The petitioner possess degree of graduation with two subjects taught in senior secondary school level, however, the respondents by confining the term “schools” used in column 4 of entry No.8 referred above to the extent of secondary school level rejected their candidature from consideration for appointment as senior teacher.

While giving challenge to the decision of the respondents, it is contended by counsel for the petitioners that the term “schools” used in entry No.8 includes senior secondary schools beside the schools upto secondary school level.

The term “schools” is not defined under the Rules of 1971, however, definition of it is prescribed under the Rajasthan Educational Service Rules, 1970 (hereinafter referred to as “the Rules of 1970”) as under:-

> “2(g) 'School' means High School, Secondary and Higher Secondary School, Deaf and Dumb and Blind School, Sadul Public School, Special Mentessory School, STC Training School, Rajasthan School of Arts; and Sangeet Sansthan.”

Relying upon the definition above, it is contended by counsel for the petitioners that the term “schools” is quite wide and by no stretch of imagination it can be confined to the schools only upto secondary school level. It is also urged that the legislature consciously used term “schools” in entry No.8 with view to include all kind of schools in it. It is emphasised that if the intention of the legislature was to confine the term “schools” for secondary level school then a specific distinction schools would have been given in the rules as the same is there while prescribing teaching experience for recruitment to the other posts under the Rules of 1971 itself.

Per contra, in reply to the writ petitions, it is stated by the respondents that the petitioners

are not having bachelors degree with any second subject being taught at secondary level and thus they are not entitled for appointment as senior teacher under the Rules of 1971.

It is stated that the definition prescribed under the Rules of 1970 is having no relevance in present controversy as recruitment is to be made under the Rules of 1971.

Heard counsel for the parties.

In the structure of education system prevailing in State of Rajasthan there are various kind of schools such as primary schools, upper primary schools and senior secondary schools beside certain other autonomous schools. The recruitment for the teachers and other teaching and non teaching staff in the schools is made under the Rules of 1970 or under the Rules of 1971. The Senior Teachers appointed under the Rules of 1971 are having an avenue for promotion to the posts prescribed under the Rules of 1970, as such the Rules of 1970 are not strange for interpreting a term used but not defined under the Rules of 1971. The term “schools” is not defined under the Rules of 1970, therefore, definition of it prescribed under the rules of 1971 is certainly useful for determining the question as to whether senior secondary schools are inclusive to term “schools” used

in column 4 of the entry No.8 of Section F of the Schedule appended to the Rules of 1971. According to the definition of term “schools” prescribed under Rule 2(g) of the Rules of 1970 a higher secondary school is also part of school. In view of it under the Rules of 1970 all type of schools those are part of education system in State of Rajasthan comes within the purview of the term “schools”. If the schools above the secondary level is considered as a “school” under the Rules of 1971, then there is no reason for not bringing the same within the purview of term “schools” under the Rules of 1971, specially in the circumstances that a senior teacher is entitled to teach in senior secondary school also.

It is also pertinent to note that certain posts which are now part of the Rules of 1970 and were earlier part of the Rules of 1971 also requires the eligibility for recruitment similar to the post of Senior Teacher. The post of Lecturer (School Education) in Humanities and Commerce Group was part of the Rules of 1971 and was substituted for the expression “Senior Teacher” vide notification No.F2(6) DOP/AII/84 dated 6.1.1990. The eligibility for recruitment to that post was also of having five years experience of teaching in recognised institution of or above the standard of the secondary school. Similarly, the Lecturer (School Education) in Science that was also substituted for the expression “Senior Teacher”

vide notification dated 6.1.1990 was also have eligibility with an experience of five years of teaching in a recognised institution of or above the standard of secondary schools. The post of Divisional Librarian Gr.I, Librarian, State Institute of Education, Librarian, State Institute of Science Education are part of the Rules of 1971 and the eligibility prescribed for these posts under Section A of the Schedule appended with the Rules of 1971 is that the incumbent must be graduate with degree or diploma in Library Science plus 7 years experience of working as Librarian in Senior Higher Secondary or Higher Secondary School or in Higher Institutions. The legislature while prescribing eligibility for the posts referred above other than Senior Teacher has specifically referred the level of the schools, whereas, such level is not prescribed in column 4 of entry No.8 to Section F of Schedule appended with the Rules of 1971. Such a demarcation is not unintentional but proves that the term “schools” used by legislature with an intention to include all kinds of schools including Senior Secondary Schools. If the intention of the legislature was to exclude the Senior Secondary Schools in clause (4) of entry No.8 of Section F of Schedule appended with the Rules of 1971, then a specific exclusion must have been given as it is prescribed in eligibility pertaining for other posts referred above. The respondents by excluding candidature of the petitioners from consideration to

be appointed as Senior Teacher by confining the term “schools” upto secondary schools are adding something with a statute that was not intended by the legislature.

In view of the discussion above, the action of the respondents rejecting the candidature of the petitioners to be considered for appointment to the post of Senior Teacher is held illegal and it is declared that the term “schools” used in column No.4 of entry No.8 of Section F of Schedule appended with the Rules of 1971 includes Senior Secondary Schools with other schools upto secondary school level.

The writ petitions are accordingly allowed and the respondents are directed to consider the candidature of the petitioners for the purpose of appointment as Senior Teacher in respective subjects and if they stand in merit, appointment be given to them accordingly.

No order to costs.

( GOVIND MATHUR ),J.

kkm/ps.